Calif. Legislature. Assembly.
Interim Committee on Revenue and Taxation.
Transcript of proceedings, hearing on public indebtedness ... [Fresno] January 9, 1958.

California. Legislature. Assembly. Interim Committee on Revenue and Taxation.

TRANSCRIPT OF PROCEEDINGS

HEARING ON
PUBLIC INDEBTEDNESS of the Subcommittee on Public Indebtedness

JANUARY 9, 1958

ASSEMBLY REVENUE AND TAXATION
SUBCOMMITTEE ON PUBLIC INDEBTEDNESS

S. M. Masterson, Chairman
Carl Britschgi
Leverette House
H. R. Klocksiem
Alan Pattee

Mary Virginia Galli, Committee Secretary

ASSEMBLY REVENUE AND TAXATION SUBCOMMITTEE

ON

PUBLIC INDEBTEDNESS

S. C. Masterson, Chairman

Hearing of the Assembly Revenue and Taxation Subcommittee on Public Indebtedness on January 9, 1958, at 10: a.m., Top Floor of The P. G. & E. Building, 1401 Fulton Street, Fresno, California.

S. C. Masterson, Chairman

MEMBERS PRESENT:
S. C. Masterson
Leverette House
Herbert R. Klocksiem
Alan Pattee

MEMBERS ABSENT:
Carl Britschgi

OTHER REVENUE AND TAXATION
COMMITTEE MEMBERS PRESENT:
Charles Wilson, Vice Chairman
of the Assembly Revenue and
Taxation Committee

STAFF MEMBERS PRESENT:
Mary Virginia Galli, Committee Secretary

OTHERS PRESENT AND/OR PRESENT TESTIMONY:
Alan M. Firestone, Chief Deputy City Attorney, City of San Diego
Allan Grant, Member, Board of Directors, California Farm Bureau Federation
Phillip J. Gregory, Investment Bankers Association, California Group
Robert E. Hanley, Legislative Representative, California Farm Bureau Federation
Clara McDonald, President, United Patriotic People of the U.S.A.
Robert E. McKay, Assistant Executive Secretary, California Teachers' Association
Les A. Parker, Los Angeles Building and Construction Trades Council
Harry D. Ross, Controller, City and County of San Francisco
San Diego County Board of Supervisors

MEETING RECORDED BY:
Joe Tracy, Sergeant-at-Arms

I N D E X

.., A Hearing of the Assembly Interim Committee on Revenue and Taxation, Subcommittee on Public Indebtedness, was convened at 10 a.m., Thursday, January 9, 1958, Top Floor of the P.G. & E. Building, 1401 Fulton Street, Fresno, California, Assemblyman S. C. Masterson, Chairman, presiding.....

CHAIRMAN MASTERSON: The meeting will come to order. As you probably know, we are minus a couple members of the committee and, also, some of the witnesses have advised us that the airport is fogged in and they will not arrive until later today. However, this is the Assembly Revenue and Taxation Subcommittee on Public Indebtedness and members of the committee are: Assemblyman Leverette House (here to my right) from Brawley and on my far left Assemblyman Alan Pattee from Salinas and next to him Charles Wilson from Los Angeles, the Vice-Chairman of the Assembly Revenue and Taxation Committee. Joe Tracy, the Sergeant-at-Arms, is running the recording machinery there. We don't have an amplifier in here but your remarks will be recorded. Mary Virginia Galli is the Committee Secretary and I am S. C. Masterson, Assemblyman from Richmond, California. There is a quorum present. We expect Mr. Klocksiem and Mr. Collier later today.

This subcommittee is authorized by House Resolution 305 to investigate the subject matter of Assembly Constitutional Amendment No. 46, which was introduced at the 1957 session of the Legislature and was amended a number of times.

That constitutional amendment dealt with the subject matter of Article XI, Section 18 of the California Constitution relating to the limitations upon the incurring of long-term public indebtedness. Long-term public indebtedness under the present law simply refers to indebtedness that a city, county or school district incurs which cannot be paid out of the current year's revenue. At the present time the Constitution does not refer to any districts or public bodies or agencies other than cities, counties and school districts although there are several hundred other types of districts which have taxing power and the power to incur a long-term indebtedness. The law presently, as to those districts specifically named, requires a two-thirds vote of the electorate to authorize the issuance of bonds and the levy of a tax to pay for them.

The amendment addressed itself to several things. First, it attempted to re-define the districts that would be affected by the amendment to include all public bodies which have a definable area. This, of course, was a problem to work out a definition that would cover what are now special districts, as well as the three types

of municipal bodies that are now covered. And, also, it sought to re-define what is a public indebtedness. At the present time, although not in too clear a fashion, certain contracts which might on their face be thought to be long-term indebtedness because not payable out of current revenue has been held not to be an indebtedness. And this particularly covers so-called lease-purchase contracts.

The amendment also addressed itself to changing the percentage of vote required. At the last hearing, testimony was adduced that the reason for having a two-thirds limitation in the Constitution, historically was based upon the fact that at the time of the passage of that amendment to the Constitution this probably represented a fair proportion of the number of people who were property owners and who would be the ones liable for the payment of the taxes to retire the indebtedness. There has been in recent years an increase in property ownership amongst the inhabitants of the state and a 60 per cent vote requirement would probably accomplish the same historical purpose that was had in mind when the two-thirds majority was adopted. There were also those who testified who raised a philosophical objection to the concept of a two-thirds vote being required and urged that only a majority vote be required because we vote in a democracy and should accept majority rule.

The amendment as last amended in the Assembly, May 8, 1957, contained provisions relating to revenue bonds. The proponents of this measure, the Investment Bankers Association of California, at the last hearing suggested that in their opinion that provision was unnecessary and was really alien to the idea of what they were seeking to accomplish; namely, to provide a better method of obtaining public funds at the lowest rate of interest because they felt that revenue bonds, themselves, carry with them their own safeguards in that the project itself has to be first approved and then the bonds sold on the market on the basis of whether the project is a good one or not and, therefore, a further vote would not be essential. Proponents, the Investment Bankers Association, also in their testimony stated that, first of all, the amount of public indebtedness being incurred in California is great; and, secondly, the cheapest kind of money that can be obtained by public bodies is general obligation bond money and that it was their opinion that the requirement of a two-thirds majority vote to approve public bonds was defeating its purpose by forcing agencies to go into other types of borrowing which were more expensive. Also that if the percentage vote requirement were reduced that the public agencies themselves would benefit because they would be able to obtain needed money by general obligation bonds at a lower rate of interest. They also stated that in their opinion that as a result of this two-thirds vote requirement the so-called lease-purchase methods

to avoid the requirement of a vote had been worked out and that now there were numbers of instances where the public bodies didn't even go to the trouble of attempting to obtain general obligation bond money, but this other method being available simply used that with the result that higher interest had to be paid. They also pointed out that in borrowing money and selling bonds that the total methods of obtaining money are considered by investors. Even though the particular public agency may have a very small amount of general obligation bonds and may be only offering a small issue, that investors, and the bankers advising them, do not look just to that general obligation bond indebtedness, but look to the overall indebtedness of the community or public agency. And that as a result of easy methods, or methods, as they put it, that did not require a vote, that the interest rate was increased even on general obligation bonds.

There were other matters that were offered in respect to the measure, but I believe that this is an explanation of what the measure is about; what the present law is, and a portion of the testimony that has been brought before the Committee to date.

I wonder if there are any remarks from the members of this committee. Mr. House, do you have any---comments to make?

ASSEMBLYMAN HOUSE: My only comment would be is that I think your explanation was very fine and complete.

CHAIRMAN MASTERSON: Alan, do you---

ASSEMBLYMAN PATTEE: This is just my first meeting and I'm beginning to find out a little more about it.

CHAIRMAN MASTERSON: Well, that was one of the reasons why I went into as much detail as I did because I think it is important that we get the background before us before we start these meetings and take the testimony so that we know where we are going and can direct our questions to bring out the things which should be pertinent to our investigation.

I would also like to state that the amendment as offered, and in its final amended form of May 8, 1957, was not considered by the proponents, at that time, to be in a final or complete form; that without doubt there is language in the amendment that needs going over and carefully screening to see that it says exactly what we want it to say and no more. One question that was brought out in testimony at the last hearing was the question of whether the amendment would limit the repayment of general obligation bonds to ad valorem taxpayers. It was not my intention, as author of that amendment, nor was it the intention of the proponents, the Investment Bankers, to have the amendment do that. It may very well be that we've got to work

that language over to be extremely sure -- that's why we're having these hearings --to be extremely sure that it does not do something of that sort which we don't intend.

So we will now proceed with the witnesses who are here. I would like to call at this time on Mr. Alan Firestone, who is the Chief Deputy City Attorney of the City of San Diego, and ask him if he would state his name and organization and give his testimony to the committee. Then committee can ask questions.

ALAN M. FIRESTONE
Chief Deputy City Attorney
City of San Diego
Civic Center
San Diego

MR. FIRESTONE: Honorable Chairman and Members of the Committee. I am Alan M. Firestone, Chief Deputy City Attorney for the City of San Diego. Aside from my prepared statement I have submitted to you a map prepared by the County Assessor of San Diego County. (Exhibit I) You will note, however, that it refers to the situation as it existed in the year 1955. Since then the percentage of non-taxable land in San Diego County has risen slightly. There is, as you probably are aware, a tendency in this direction in the State of California and particularly in San Diego County. Incidentally, just for the record, the present Assessor is not Arthur C. Eddy as is shown on the top of the map, but is Mr. John C. McQuilken. I will refer to the map a little later.

The amendments to the Constitution, Section 18 of Article XI, as proposed by Assembly Constitutional Amendment No. 46 have been reviewed by the various departments of the City of San Diego and by the City Attorney of the City. The opinions expressed by the speaker in this statement have been unanimously approved by all of the various departments which have reviewed the bill.

Under the Constitution as it now exists and as it applies to the City of San Diego, San Diego may not incur any indebtedness or liability exceeding in any year the income and revenue without the first assent of two-thirds of the qualified electors. This constitutional limitation does not, of course, apply to indebtedness incurred by the issuance of revenue bonds against the income and revenue obtained from the operation of water facilities or sewer facilities. The major change, as proposed by A.C.A. 46, insofar as it affects the City of San Diego, would require that prior to the issuance of general obligation bonds, the City would be required to provide sufficient ad valorem taxes to pay the interest and principal of the bonds. In the event that the bonds were issued for the purpose of providing additional sewer or water facilities, the principal and interest payments on such general obligation bonds could not be paid from the revenues received from the operation of either of those systems.

The significance of this change is rather startling when applied to conditions as they now exist and will most likely continue to exist in the San Diego area. It is common knowledge that revenue bonds to be saleable must pay substantially higher interest rates than are paid under general obligation bonds, usually a difference of approximately one per cent. Under the present Constitution, the City of San Diego pays for the interest and principal retirement payments on general obligation bonds issued for the purpose of constructing water facilities out of the revenues received by the San Diego Water Department from the operation of the water facilities. ALL water users in the City of San Diego pay to the Water Department of the City of San Diego for the water consumed at rates established by City ordinances or by contract with that consumer. The water consumers or users include the large Governmental facilities established in the City of San Diego, such as the Naval Training Center, the Eleventh Naval District and all of its supporting facilities, the Marine Corps Recruit Depot and substantial numbers of other Governmental installations too numerous to mention here. In addition, of course, all other water users situated on property which is tax exempt for other reasons likewise pay to the Water Department the prescribed rates. The City of San Diego likewise imposes a sewer service charge and all users of the sewer facilities pay the prescribed rates similar to the situation in the case of water facilities.

I'd like to digress from my statement for a moment and refer you to this map. (Exhibit I) On the map, and you can see, that within San Diego County, 54 per cent of the entire county in 1955 was tax exempt property. This includes all categories of course. Within the city the percentage is not quite so large as it is in the county because of the great volume of public and state parks that are involved. But the ratio within the city of assessed valuation which is exempt is higher than it is in the county. This map refers to area. In speaking of ratio of assessed value the difference is extremely greater in the city than it is in the county. Going back to my statement now.

In addition, the City of San Diego pays annually approximately $1,500,000.00 to the Metropolitan Water District as its proportionate share of the water district annual assessment. This assessment is paid out of the revenues of the San Diego Water Department and does not appear upon the real property tax rolls.

An analysis by the Assessor of the County of San Diego discloses that 54.1 per cent of all of the real property located in San Diego County is tax exempt. In the City of San Diego a substantial portion of the property is in the same exempt category. By the adoption of A.C.A. 46 in its present form, at least a substantial portion of the

payments heretofore borne by the rate payers will be paid by the collection of real property taxes imposed upon the less than 50 per cent of the property subject to taxation. This will substantially increase the tax rate in the City of San Diego. To illustrate, presently the City of San Diego has outstanding general obligation bonds for water facility purposes in the amount of $18,750,000.00. Water Department revenue bonds are presently outstanding in the amount of $5,400,000.00. During the fiscal year 1957-1958, the interest and principal payments on the "Water Department" general obligation bonds totaled $1,540,000.00. The total for the revenue bonds was $445,000.00. An analysis of the interest rates has indicated that the total annual payment for the present fiscal year would have been substantially increased had revenue bonds been issued in place of the large amount of general obligation bonds above mentioned. If those general obligation bonds had been issued under the provisions proposed by A.C.A. 46, that is, collection of an annual ad valorem tax for payment, the present City of San Diego tax rate of $1.70 would have been increased by 30 cents for each $100.00 of assessed valuation thereby. In addition a substantial portion of the annual Metropolitan Water District of Southern California assessment of $1,500,000.00 against the City of San Diego is for the purpose of paying bond redemption and interest by that District. Under the provisions of A.C.A. 46, all or a substantial portion of the One and One-half

Million Dollars would be required to be transferred upon the real property tax rolls. This would amount to an increase of 28 cents per $100.00 assessed valuation to the tax rate in the City of San Diego.

Presently the City of San Diego is contemplating the issuance of bonds in the principal amount of approximately $25,000,000.00 for the purpose of constructing a new sewer treatment plant and major sewer lines connected therewith. Such expenditure is necessary because of the pollution of the waters of San Diego Bay by inadequately treated sewage presently being deposited there. In a bond issue of this size, the cost of issuing and paying for revenue bonds would be approximately $200,000.00 per year more than the cost of issuing and paying for general obligation bonds. Under the amendments as proposed by A.C.A. 46, the City of San Diego would not have a free choice in the determination of the type of bonds to be issued for that $25,000,000.00. If general obligation bonds were issued under the provisions of the proposed amendment, all of the interest and redemption payments would be required to be made from ad valorem taxes. This would result in an increase in the tax rate of approximately 22 cents for each $100.00 of assessed valuation.

The basic and significant effect of what the speaker determines to be the most important change to the constitutional provisions would be to transfer the interest and

redemption payments on general obligation bonds issued for water or sewer purposes from the water rate payer or the sewer rate payer to the property owner. In the alternative the City Council would be faced with the decision to pay substantially increased interest charges on revenue bonds issued for the same purposes. The officers of the City of San Diego earnestly believe that it is not the intention of the proponents of Assembly Constitutional Amendment No. 46 to place cities and other public agencies in California in this financial position.

One other phase of A.C.A. 46 requires some comment prior to the conclusion of this statement. That is the proposed reduction of the number of qualified electors to authorize the issuance of general obligation bonds. Such reduction would be a great advantage to the City of San Diego. Some three years ago a proposal was submitted to the voters of the City to issue Sixteen Million Dollars of general obligation bonds for the purpose of constructing a new sewer treatment plant. The issuance of those bonds was defeated at that election. 64 per cent of the voters approved that bond issue; less than 3 per cent additional favorable vote would have authorized the issuance of the bonds. Since that election, construction costs and property acquisition costs have increased to such an extent that the cost of the proposed facilities has increased by Nine Million Dollars. Can it be said that a two-thirds requirement for the

issuance of these bonds has served the public interest in the City of San Diego and in San Diego County?

In conclusion, it is the position of the City of San Diego and the officials thereof that an amendment to the Constitution as proposed by A.C.A. 46 should be altered with respect to the provision making mandatory the levy of an ad valorem tax for the purpose of paying interest and principal payments on general obligation bonds. On behalf of the City of San Diego, I respectfully request that the provision of A.C.A. 46 be altered to eliminate this requirement.

CHAIRMAN MASTERSON: Thank you. Do any members of the committee have questions?

ASSEMBLYMAN PATTEE: Yes.

CHAIRMAN MASTERSON: Mr. Pattee.

ASSEMBLYMAN PATTEE: Mr. Chairman. As I see it you do favor changing the future majority vote for bonds.

MR. FIRESTONE: I think that this phase is a little bit onerous. In our experience within San Diego County, in addition to the one that I've mentioned here, we had considerable difficulty in the issuance of bonds for the purpose of constructing a new Courthouse facility there, which we rather badly need and have needed for many years. That issue was submitted some three or four times, as I

recall, to the voters in San Diego County and defeated by fairly narrow margins each time. If this portion of the bill were altered to reduce it to even 60 per cent, although I would urgently suggest that 50 per cent, or a majority, should be sufficient, that any reduction certainly would aid in some measure to make more feasible the issuance of general obligation bonds.

ASSEMBLYMAN PATTEE: Well that's the part of the bill that you like? To knock it down from 66-2/3 and you do not like having the ad valorem tax mandatory.

MR. FIRESTONE: Well, that's correct, that's correct. I'm firmly convinced, and I think that was suggested by Chairman Masterson in his initial comments, that it was not the intention of anyone in California to make this ad valorem tax phase of it a requirement. However, this has crept in and we are now faced with trying to get it out. That's exactly why I am here.

CHAIRMAN MASTERSON: Any other questions?

I wonder if I could ask you a couple of questions, Mr. Firestone?

MR. FIRESTONE: Certainly.

CHAIRMAN MASTERSON: I take it from the substance of your remarks that you agree with those who say that the use of general obligation bonds is the cheapest way for

cities, counties and public agencies to get funds.

MR. FIRESTONE: That's correct. As a matter of fact, in connection with preparing this statement, I made an analysis of the City of San Diego's situation and we found that generally speaking it would vary somewhat but it would average out a difference in interest rate of approximately 1 per cent, which is fairly substantial.

CHAIRMAN MASTERSON: Particularly over a 30-year period.

MR. FIRESTONE: Yes, yes.

CHAIRMAN MASTERSON: It would increase the cost of the issuance of bonds - sometimes - as much as 50 per cent.

MR. FIRESTONE: That's correct.

CHAIRMAN MASTERSON: And I also take it that from the substance of your remarks and as expanded in answer to Mr. Pattee's question that the City of San Diego has not resorted to lease-purchase to any appreciable extent.

MR. FIRESTONE: We have never done so. As a matter of fact, it's been the position of our office with respect to that phase that this is not the best way to do it. In addition to that kind of thing we have a Charter requirement which kind of safeguards us in addition to the

Constitutional Amendments so the combination of the two has practically kept us out of that field.

CHAIRMAN MASTERSON: And also you have actually had demonstrated to you in San Diego County that the two-thirds requirement for the issuance of general obligation bonds has been self-defeating rather than protecting the public; has in fact made it more expensive to do what you've had to do. Is that correct?

MR. FIRESTONE: That's correct, yes.

CHAIRMAN MASTERSON: I wonder if you would be willing to submit to me and to the Committee proposed changes in language to take care of your objections in respect to the ad valorem tax -- and, if I may project a question, I think maybe you will agree that it is not without some doubt that it actually does require an ad valorem tax, but we don't want to get into the position that there is any question about it -- would you submit language that would clarify that situation so that we could use that in connection with our study?

MR. FIRESTONE: I would be very happy to, sir. Incidentally, as you know, attorneys are sort of pessimists about looking into the future and in anticipating the effect of this; it's our responsibility with respect to the city to take the worst and not the best deal of it, so our position is there is some substantial doubt that whether it

does or not so we think it does require the ad valorem tax.

CHAIRMAN MASTERSON: That's a very conservative and sound attitude to take when you're drafting legislation.

Are there any other questions from the members of the Committee? Thank you Mr. Firestone.

MR. FIRESTONE: Thank you.

CHAIRMAN MASTERSON: Our next witness is Clara McDonald, who is president of the United Patriotic People of the United States. If you would come forward Mrs. McDonald and give your statement. I would first of all like to tell you, Mrs. McDonald, that the reason we didn't call you first, although you appeared on the Agenda ahead of Mr. Firestone; Mr. Firestone has another engagement that he has to make and if we ran over into the afternoon he would have been unable to have done so. So, if you would now --

CLARA McDONALD, President
United Patriotic People
of the U.S.A.
2853 Rosanna Street
Los Angeles

MRS. McDONALD: Thank you for explaining. Mr. Chairman and members of the Revenue and Taxation Subcommittee on Public Indebtedness.

SERGEANT-AT-ARMS TRACY: Would you state your name please.

MRS. McDONALD: My name is Clara McDonald, representing the United Patriotic People of the U.S.A. and the South Bunker Hill Association, offering for your consideration from observation and deliberation certain recommendations wherein the taxpayer may be relieved of present unnecessary tax burdens.

For this reason we oppose A.C.A. 46 as giving us no tax relief. We recommend that there be no ballot submitted to non-property owners on bond-issue proposals. That the two-third majority vote by the people remain. There should be placed a ceiling on budget commitments for the 58 counties. The amount of expenditures in Los Angeles County without a submission vote of the people has been criticized by the people. We recommend budget practice to show wages and salaries of the employees of agencies enabling the taxpayer to get a better perspective prior to any budget proposal of adoption. Under the Redevelopment Agency Act, the developers are able to roll four-fifths of their expenditure over on the county taxpayer.

Senate Bill 1234 now permits speculators to take any section under condemnation if in that section there is one deterioration spot. These bills and amendments have created unfair and unjust condemnation which is contrary

to the final ruling by the Supreme Court of California (Armistead vs City of Los Angeles, Case No. 22164, July 8, 1957). This ACA report (that's California Appellate Reports) is on Pages 356 to 363. They should be repealed to conform, extemporaneously, of course, to conform with the final court ruling.

Bunker Hill which comes under these situations as quoted, has been threatened with condemnation for six years with great loss to business and bankruptcy has occurred. We need to think in terms of saving the homes to conserve on our outlets for legitimate taxation rather than destroy it at the expense of the taxpayers for the benefit of speculators.

May I extemporaneously add that it brings to mind what the former speaker testified to relative to much land being absorbed from which you do not derive revenue from any sources. If there are any questions I'll be glad to answer them.

CHAIRMAN MASTERSON: Any questions from members of the committee? Thank you Mrs. McDonald. If you have a copy of that statement would you submit it to the secretary sitting here to help her in preparing our records.

ASSEMBLYMAN CHARLES WILSON: Mr. Chairman, I wonder if before Mrs. McDonald leaves could you tell me a little something about your organization Mrs. McDonald.

MRS. McDONALD: We're incorporated. We're a national organization incorporated in 1942 under that name.

ASSEMBLYMAN WILSON: How many people belong to it, have you any idea?

MRS. McDONALD: We are not permitted to quote our membership. We are, as the name specifies, we're patriotic; we try to be; we feel that people are individuals first before they're a democrat or a republican.

ASSEMBLYMAN WILSON: I wasn't questioning the motives of your organization, I was just wondering how many people you represented, et cetera.

MRS. McDONALD: I might, for your benefit Mr. Wilson, explain that our strength lies more in the fact that we coordinate with many organizations.

CHAIRMAN MASTERSON: If we could have a copy of the statement you made -- thank you.

Are there any other people who wanted to testify this morning? Are there any remarks from any members of the committee before we take the noon recess? Then we will recess until 2 o'clock and we hope that the fog has lifted before then so that some of our people can get here.

(The Subcommittee reconvened at 2 p.m.)

CHAIRMAN MASTERSON: The committee will come to order and it will be noted in the records that there is a quorum present: Assemblyman Pattee, Assemblyman Wilson, Assemblyman House, Assemblyman Herb Klocksiem, who joins us this afternoon -- he was fogged in in Los Angeles; that's not strictly correct, he was grounded in Los Angeles because Fresno was fogged in.

ASSEMBLYMAN KLOCKSIEM: That's it, get the record straight.

CHAIRMAN MASTERSON: On this afternoon's schedule we have several witnesses, however, I should note that Robert McKay, of the California Teachers Association, was to testify today but he advised me this morning, I think he was in San Francisco, that they were fogged in and so evidently he won't be able to make it. (Mr. McKay's statement appears in the Appendix.)

ASSEMBLYMAN WILSON: He was probably happy wasn't he that he was fogged in.

CHAIRMAN MASTERSON: Well not too happy as I gathered because he had gone down to the airport twice. I don't suppose that made him happy.

The Board of Supervisors of the County of San Diego has submitted a statement and asked that it be read into the record. It's addressed to Miss Mary Virginia Galli, the

Secretary of the Committee, and reads as follows:

"The Board of Supervisors of San Diego County on December 24, 1957 again went on record as being opposed to proposed Assembly Constitutional Amendment 46 and directed that a statement of the Board's opposition to said Amendment 46 be included in the minutes of your hearing to be held on January 9, 1958. Very truly yours, R. B. James, County Clerk."

It will be noted and entered in the record.

Representing the Investment Bankers of America, Mr. Phillip Gregory will testify before the Committee. If you will come forward and state your name for the record and the organization, and if you have an extra copy of that statement to leave with the Secretary we would appreciate it.

PHILLIP J. GREGORY
Investment Bankers Association
California Group
275 Bush Street
San Francisco

MR. GREGORY: Mr. Chairman and members of the Committee, I'm Phillip J. Gregory, representing the Investment Bankers of America, a California group.

As you realize, ever since 1879 the Constitution of California has prohibited any "county, city, town, township, board of education or school district" from incurring

in any year any indebtedness for any purpose exceeding the revenues for such year without the approval of two-thirds of the electors voting at an election. Or, to put it more simply, cities, counties or school districts cannot issue general obligation bonds except with the approval of a two-thirds vote of the electors.

At the time of the adoption of the Constitution, for all practical purposes, the only units of local government with taxing powers were the cities, towns, and school districts, and counties. Since then the Legislature has provided for the creation of a hundred or more different kinds of districts possessing the taxing power to a greater or lesser degree. The Constitutional provision does not apply to these districts. While the Legislature pretty generally has required a two-thirds vote for the issuance of general obligation bonds by districts, this is not true as to all districts and there is nothing in the Constitution which requires a two-thirds vote or any vote of the electors at all. I might say parenthetically that a few years ago I made a study of the voting requirements of our myriad of districts and I found that we had a completely inconsistent hodgepodge of voting requirements. This study has also been made by your own Legislative Counsel and is available in printed form and to anyone who would study it would indicate the desirability, if not the pressing need, for some uniformity in this particular field.

The rule that cities, counties and school districts may not incur a long-term debt without a two-thirds vote of the people, while the legislature is free to permit any other district or political subdivision to incur such debt with only a majority vote or no vote, exists solely because at the time the Constitution was adopted there existed few, if any, districts with taxing powers. If it is sound public policy to require by constitutional mandate a two-thirds vote in the case of cities, counties and school districts the same considerations of public policy would seem to call even more for such a limitation upon the issuance of bonds by districts. There is no logical basis, for example, for requiring a two-thirds vote before the County of Los Angeles may issue general obligation bonds and permitting the Los Angeles County Flood Control District, which comprises most of Los Angeles County, to issue general obligation bonds by a majority vote. It seems quite apparent that whatever constitutional limitation is imposed on the issuance of general obligation bonds by cities and counties it should be equally applicable to other political subdivisions. There would be general agreement on the proposition that it is better to concentrate the task of taking care of local public needs in the hands of city councils and boards of supervisors than to scatter the responsibility among many districts. There would also be agreement on the proposition that it should not be more difficult to borrow money to

build schools, than to borrow money to provide other public improvements.

The constitutional restriction also does not apply to the issuance of revenue bonds or bonds payable from a special fund. The Legislature, in authorizing issuance of revenue bonds, has generally required approval by at least a majority vote of the electorate. Revenue bonds are not general obligations and perhaps there is some warrant for not placing the same restrictions and limitations upon their issuance as upon general obligation bonds. However, at times it has been necessary to service revenue bonds out of general tax revenues in order to maintain the credit of the issuing agency. Parenthetically an example of that would be, as you probably have heard, some of these eastern states and midwestern states have gotten into trouble on their so-called revenue bonds for their freeways and in order to protect the credit of the state they did have to turn to the general taxing power even though they were called revenue bonds. Rightly or wrongly, if a political agency should permit revenue bonds to go into default its general credit would be seriously impaired.

Not only does the existing constitutional limitation not apply to bonds issued by districts, other than school districts, and to revenue bonds, but by a curious line of Supreme Court decisions it does not prevent cities, counties or school districts from incurring a long-term debt through

the means of so-called lease-purchase arrangements without any vote of the people at all. At the present time, a city or a county cannot raise money by the issuance of general obligation bonds, which is the cheapest possible way for a public agency to raise money, without a two-thirds vote of the electorate, while it may incur unlimited long-term debt through lease-purchase which is perhaps the most expensive way for it to raise money without any vote of the electorates at all.

The need for public improvements of all kinds and the difficulty often of getting a two-thirds vote, no matter how worthy the project, has resulted in city councils and boards of supervisors resorting increasingly to lease-purchase arrangements. There may well be special situations in which a lease-purchase deal is a sound method of financing for a public agency which has authority to issue tax-exempt general obligation bonds, but there are not many. Parenthetically I think by way of clarification of that, the point has to be kept in mind that you lose a very important tax advantage when you get out of the field of tax exempt municipal bonds and get into these non-conventional types of financing where income tax is a factor and a very large one.

There is general agreement among investment banking circles that the constitutional two-thirds vote requirement and the similar requirement in most district statutes has, perhaps

as much as any other factor, been responsible for the generally high credit rating of California municipals and their general acceptance in the bond markets of the country. However, this will become meaningless if cities, counties and districts embark upon a program of incurring long-term debts through devices which avoid the necessity of obtaining voter approval. If this should happen not only will political subdivisions pay more for the money they borrow in this fashion, but they will soon find themselves paying more to borrow money on general obligation bonds. A difference of one-fourth of one per cent in the interest rate on state or municipal bonds means millions of dollars a year to the taxpayers of this state.

I believe in your previous hearing you asked for and received an estimate of what the difference of one quarter of one per cent would mean to two billion dollars worth of bonds, which is the amount we now have outstanding and unsold, over an average 20-year term and I think the answer, which is correct I believe, was one hundred million dollars. That's how much a quarter of a per cent interest difference makes.

The existing constitutional provision applying as it does only to cities, counties and school districts and applying as it does only to general obligation bonds means; first, that districts not subject to the provision can be organized to do the jobs that cities and counties should do; and,

secondly, that cities and counties are compelled or induced to circumvent the constitutional provisions by resorting to more expensive ways of financing needed public works. It would seem to go without saying that any constitutional restriction upon the incurring of long-term public debt for which the taxpayer is liable should apply to any long-term debt regardless of the name given to it or the means by which it is incurred.

A.C.A. 46 would reduce the votes required before cities, counties and school districts could issue general obligation bonds from the present 66-2/3 per cent to 60 per cent, but would make the restriction applicable to all agencies possessing the power to levy ad valorem taxes and would make it applicable to any long-term debt which would constitute a general obligation of the taxpayers. It would require a majority vote for revenue bonds and bonds payable only from a special fund, which is the vote required under existing statutes authorizing revenue bonds. However, a Chartered city and county would continue to issue revenue bonds without a vote of the electors if its Charter so provided.

The proposed amendments as now written would not apply to ordinary leases nor to short-term lease-purchase arrangements, but it would require a 60 per cent vote before a long-term debt could be incurred under the guise of lease-purchase. It may be that there should also be exempted from the amendment debts in the form of conditional sales contracts

of equipment, such as fire fighting equipment , and perhaps there should also be exempted short-term borrowings by agencies operating revenue-producing public works.

In conclusion I might say that it is believed by the Investment Bankers Association, California Group that the adoption of a constitutional amendment along the lines of A. C.A. 46 would, in the long run, strengthen the market for California municipal bonds and help insure a continuation of the generally high credit rating they have heretofore enjoyed. The effect of reducing the vote requirement in the case of cities, counties and school districts from 66-2/3 to 60 per cent would be more than offset by reassuring investors in California municipal bonds that long-term public debt will not be incurred without voter approval. And I might emphasize that the salient effect of this proposed amendment is to allow the voters to have a chance to pass upon the incurrence of a long-term debt. That's what it does in anutshell. Its adoption should over the years save the taxpayers millions of dollars by making it as easy for public agencies to finance needed public improvements by orthodox low-cost tax-free methods of financing as by resorting to other more costly methods. Its adoption should also tend to discourage the organization of special districts to do what can and should be done by existing units of local government.

Mr. Chairman, that's the end of my prepared statement and I appreciate the chance to appear before this group.

CHAIRMAN MASTERSON: Thank you Mr. Gregory. Are there any questions from members of the committee?

ASSEMBLYMAN KLOCKSIEM: May I ask a question Mr. Chairman.

CHAIRMAN MASTERSON: Mr. Klocksiem.

ASSEMBLYMAN KLOCKSIEM: Mr. Gregory, did you say that this wouldn't apply to chartered cities?

MR. GREGORY: There is an exemption in the draft as it now stands I believe, Mr. Klocksiem. It was thought that there has for so many years been a recognition of the importance of the economy on a local level of a chartered city, etc., that perhaps it would be well not to attempt to go around that at this time so that any special provision in a city charter would continue to be operative.

ASSEMBLYMAN KLOCKSIEM: And may I ask too did you say that the boards of supervisors in, for instance, Los Angeles county are they governed by a majority vote in an instance of this kind?

MR. GREGORY: In an instance of what kind?

ASSEMBLYMAN KLOCKSIEM: Well, in bond issues, not bond issues, but in getting the large sums of money.

MR. GREGORY: Well, take any board of supervisors, under the State Constitution, incurring a long-term obligation over and above what the revenues of the county could repay in a year, they would have to have approval of two-thirds of the electors to go ahead and do that.

ASSEMBLYMAN KLOCKSIEM: I thought you said something about the majority of the board of supervisors.

MR. GREGORY: Well, I'm talking about general obligation bonds now. If you get over into revenue bonds the usual requirement is a majority vote.

ASSEMBLYMAN KLOCKSIEM: On these long-term leases that they take is to get out from under issuing bonds for instance. How is that governed by the supervisors? Is that governed by a majority vote of the supervisors?

MR. GREGORY: Well, of course, that would depend upon the local arrangement. Now presumably any decision of a board of supervisors would be made by a majority vote of the supervisors, but the salient feature I think to keep in mind about a lease-purchase contract is that, at least in our experience, the principal reason for its existence is to get around going to the people to obtain their approval of the incurrence of the obligation.

ASSEMBLYMAN KLOCKSIEM: Well that's right and I think that's one of the evils that we are trying to get at.

MR. GREGORY: I think that's right and I've heard the figure mentioned that there is some forty million dollars in hidden secret debt existing in the county of Los Angeles.

ASSEMBLYMAN KLOCKSIEM: That's right and the people don't know anything about it, do they.

MR. GREGORY: No. And I think, although I am not from the locality and perhaps shouldn't speak on it, I understand that there is some sort of a taxpayers protest going on in Los Angeles county. And the fact is that it does take taxes to make these lease-purchase payments and yet you've avoided going to the people at the time to secure their approval and they wake up to how much it costs them years later and there is a little ill feeling about it.

ASSEMBLYMAN KLOCKSIEM: You're absolutely correct. Thank you.

MR. GREGORY: Thank you.

CHAIRMAN MASTERSON: Any other questions by members of the committee? Mr. Pattee.

ASSEMBLYMAN PATTEE: Mr. Gregory, if a bill like this went through which would stop a lot of the lease-purchase agreements and we went into a mandatory, or sold somewhat mandatory obligation bonds, this would help the banking

industry quite a bit too wouldn't it.

MR. GREGORY: Well it would and wouldn't. Of course, I think it's fair to say that a good deal of the funds used in a lease-purchase operation often would be borrowed from a bank so that wouldn't have any effect. But actually I'd like to make this point, Mr. Pattee. There's nothing in this proposed amendment that prohibits lease-purchase. All it does is say you have to submit it to the people. For example, Senator Dolwig, for the second session in a row, submitted and this time obtained the approval of the Legislature and signature of the Governor of a lease-purchase for schools. We didn't oppose that because at our request a simple little one-sentence provision requiring voter approval was inserted. So that's all it does is say that the people should be allowed to have a chance to vote on it. That's all it does.

CHAIRMAN MASTERSON: Mr. Wilson.

ASSEMBLYMAN WILSON: Mr. Gregory, you mentioned that in a nutshell, this Constitutional Amendment would decrease the percentage of vote from 2/3s to 60 per cent that it would take to pass a bond issue. The gentleman from San Diego was concerned about another feature, however, he seemed to feel that the requirement of an ad valorem tax to take care of the interest payment and then eventually develop a sinking fund for the principal payment would create

quite a hardship on cities and would require them to raise their tax rate considerably and make an additional burden on the taxpayers - do you support both of these features of the Constitutional Amendment or are you principally concerned with the one that decreases the voters percentage.

MR. GREGORY: Well, Mr. Wilson, I - it's hard to say what the consensus is in our group because we represent a broad range of interest. I think that the consensus would - has been and is now a rather conservative approach to this. Thinking that the conservative approach is the soundest way to approach anything of this sort involving the State's credit, therefore, I think our group has principally fought to maintain the 66-2/3% requirement. I've appeared on a number of bills, and made that request of many authors in the last few years.

ASSEMBLYMAN WILSON: Here it changes.

MR. GREGORY: Well, they have traditionally, but I think you can testify better than I, the true merit of compromise in our legislative process. Now, we are bringing in and enveloping a number of other units which at the moment are operating under perhaps a simple majority rule. And they might find the transition to 2/3s somewhat abrupt, therefore, we think that a 3/5s rule might be a happy middle of the ground so to speak. Furthermore even under your existing units which are presently under the 2/3s

requirement, considering the tremendous needs for new facilities in this growing State and the experience you've had, I'm sure, on a local level, with your own people having some difficulty in getting this two-thirds vote even though we think it's desirable, we recognize that there's a substantial body of opinion in this State that feels that 2/3s is somewhat high, so we don't feel there's any magic figure, that it necessarily has to be 66-2/3s per cent; we think it's healthy to have a higher requirement, but we have more as a compromise than anything else, and bending a little and making a little more flexible, we have gone along with the r eduction down to 60%, but we think the principal merit of this is making it a uniform requirement for all important agencies in the State rather than just applying the requirement to certain agencies and to certain types of long term debt.

ASSEMBLYMAN WILSON: Well, now about the property owners tax to take care of the interest - are you in favor of that? That was -

CHAIRMAN MASTERSON: I think, if I could interrupt, Mr. Gregory didn't listen to Mr. Firestone's presentation, but he was referring to - if you have a copy of the bill as amended in the Assembly, May 8, 1957 - he was referring to page 2, lines 1 through 7, and construed that as meaning that no general obligation bonds could be voted unless

provision be made for the entire payment of the bonds out of ad valorem taxes and that they would be precluded from the use of revenue from the project and I informed him and this matter has been discussed previously with Mr. Landels that it wasn't that intent - in the first place, I don't think the language really says that - but if it could possibly be so construed, it was not the intent of the proponents to do that and I requested him to give us some clarifying language.

ASSEMBLYMAN WILSON: You don't think that's an important issue then, as far as

CHAIRMAN MASTERSON: No, because I don't think it does it, because if you read it, that isn't what it says. If there's any chance of that, we'll change that.

MR. GREGORY: Well, Mr. Chairman and Mr. Wilson, I'm familiar with the point to the extent that I have read the transcript of the last hearing and I thought that the gentleman's point might very well be quite well taken. He gave the example of a peculiar situation where they weren't able to tax the United States Navy and Marine Corps too effectively so they got their costs back through charging for the water, I think the example was, and certainly there was no thought of causing any difficulties there and as the Chairman stated, we don't believe that the language requires the interpretation he gave, but I think anyone would be more than happy to make a slight change in the drafting -

that's all that is involved to make - to assure them that that wouldn't be the result.

ASSEMBLYMAN WILSON: Well, that seemed to be the most important point he made in his presentation. It was an important thing to them -

MR. GREGORY: Definitely.

ASSEMBLYMAN WILSON: But apparently as far as the intent of the legislation is concerned, that's not important.

CHAIRMAN MASTERSON: It's not important because if there is that problem, we certainly can clarify it.

Are there any other questions from members of the Committee?

I'd like to ask you a couple of questions if I could, just to follow up the line of questioning by Mr. Pattee. In respect to the 66-2/3s requirement, has it been the experience that as a result of the failure to meet that requirement, cities, counties and school districts - well, cities and counties, have gone to other and more expensive means of financing public indebtedness?

MR. GREGORY: I think that is definitely the fact and I think it is one of the more unfortunate facts of our government today.

CHAIRMAN MASTERSON: In other words by making the requirement 66-2/3s %, we have often defeated the very purpose,

namely, of getting low cost financing, and have caused them to find ways to avoid any vote at all.

MR. GREGORY: That's true, I think one thing that's probably quite familiar to all of you, and - but we might make it express here is that in many a community, you'll have a very needed worthwhile project - a bond issue will be proposed to the people and it might miss by a very slight margin and that causes a lot of feeling against the voting requirement. This probably would protect a certain number of those elections which just barely lose and perhaps a few that are somewhat questionable might be passed on, but we feel by, at the same time, sweeping into the guarantee all these other types of debt and these other districts, that the overall benefit would be much greater than any possible harm you might say would be caused by the reduction.

CHAIRMAN MASTERSON: Are there any other questions from members of the Committee?

ASSEMBLYMAN PATTEE: Well, Mr. Chairman, since this is your bill, I presume that the Legislative Counsel has gone over this very closely with you. You do not feel then, that Mr. Firestone's feeling that this language would prevent charges on water, etc., along the line is in there?

CHAIRMAN MASTERSON: Well, no, it doesn't really read that way, although, I suppose if you wanted to get

super-technical, that would be possible construction, but I don't think any court would give it that construction because the courts would give it a reasonable construction and the reasonable construction is that it doesn't change the law from what it presently is in that respect and presently there's no such interpretation about general obligation bonds.

MR. GREGORY: I think the feeling is that probably anyone would be happy to make a slight change in the drafting to alleviate any fears on that score.

CHAIRMAN MASTERSON: That's right, but the present law reads exactly the same way and no one has ever made that construction of it, but then no one's ever raised the point, I guess, in court yet.

ASSEMBLYMAN WILSON: What are the requirements for State agencies on general obligation bonds, is it just 50% or is it -

MR. GREGORY: That's correct and this amendment would not have any affect on that. I think that while we do want consistency certainly, and uniformity, we only should insist on that when there's a reason for having the same voting requirement and it's my understanding that there is a valid reason why a majority - a simple majority vote is sufficient on a State-wide election and that is mainly that you have a State bond issue before the people only concurrently with a

State-wide election which will draw out millions of voters whereas often on your local-level elections, or your special elections, you have a very small minority of people actually showing up to vote.

ASSEMBLYMAN WILSON: I was thinking of the Transit Authority now, that's a State agency, but it's confined to just a one-county area, would that be a 50% proposition, for a general bond issue?

MR. GREGORY: What are you talking about - Revenue Bonds?

ASSEMBLYMAN WILSON: In the event they go to general obligation bonds?

MR. GREGORY: Well, that would be - that would be a simple majority under this just as it probably is under the law right now. You see all your thousands - well not thousands, but all your scores of special district laws which are a real headache to anyone - any legislator or anyone else working in the field - almost all of them require a simple majority now for revenue bonds. So there would be no change.

CHAIRMAN MASTERSON: There would be no change there and at the present time, the law applies only to counties, cities, and school districts, so whatever your Transit Authority has as a requirement as a result of legislation is it's requirement now which may be a majority, or it

could be 2/3s or it could be no vote requirement at all, so this would affect it because it would put it under the same requirement as every other thing, but another comment that might be made in respect to the State-wide bonding is this; that it's a Constitutional Amendment and you can amend the Constitution by a majority vote, so that each bond issue as presented could by its own terms make it a majority vote, I don't see how you could effectively put a restriction on the people in respect to a State-wide bond issue and of course your comment is certainly correct that it does have a lot more people voting on it.

Are there other questions in respect to the testimony of Mr. Gregory? Thank you very much for being here, I know you went to a lot of trouble to get here.

Les A. Parker, the Business Representative of the Los Angeles Building and Construction Trades Council was to be here to testify has requested that as he can't be here that he be authorized to file a written statement with the Committee and that this be made a part of the record and I'll accept a motion to that effect.

LES A. PARKER
Los Angeles Building and
Construction Trades Council
1626 Beverly Blvd.
Los Angeles

ASSEMBLYMAN HOUSE: So move.

ASSEMBLYMAN KLOCKSIEM: Second.

CHAIRMAN MASTERSON: Any discussion? Those in favor signify by saying aye.

ASSEMBLYMAN WILSON: Aye.

ASSEMBLYMAN PATTEE: Aye.

ASSEMBLYMAN KLOCKSIEM: Aye.

ASSEMBLYMAN HOUSE: Aye.

(Mr. Parker's Statement appears in the Appendix.)

CHAIRMAN MASTERSON: Contrary minded, and it is so ordered. Mr. Robert E. Hanley, the Legislative Representative of the California Farm Bureau and Mr. Allan Grant.

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Legislative Representative
California Farm Bureau Federation
2223 Fulton Street
Berkeley

ALLAN GRANT, Member
Board of Directors
California Farm Bureau Federation
2223 Fulton Street
Berkeley

MR. HANLEY: Yes, with your permission, Mr. Chairman, Mr. Grant - I'd like to have Mr. Grant here with me.

CHAIRMAN MASTERSON: All right, certainly. And if you'll each state your name for the record - talk into this little microphone here, the testimony is being recorded.

MR. HANLEY: I have the statement prepared that might be helpful to you after the hearing.

Mr. Chairman and members of the Committee, my name is Robert E. Hanley, Legislative Representative of the California Farm Bureau Federation. I have with me Mr. Allan Grant, who is a member of the Board of Directors of the California Farm Bureau Federation and I would like him to make the statement, however, I would like to make the introductory remarks particularly as they relate to Mr. Grant's background which I think is important for you to know and knowing that he is a rather modest individual, I think it would be better if I relate these things to you.

Mr. Grant is a farmer in Tulare County and his address is Route 3, Box 700, Visalia. As I said he is a member of the Board of Directors of the California Farm Bureau Federation, which is an organization composed of 53 County Farm Bureaus whose aggregate volunteer membership is over 64,000 farm families in California. Mr. Grant is also Chairman of Farm Bureau's tax committee.

While his appearance today is in behalf of the California Farm Bureau Federation, I think it's important for you to know also that he has served on a rural elementary school board for seventeen years. He is the president of the Visalia Union High School Board of Trustees. And also the

president of the Tulare County School Trustees Association and a member of the Board of the California School Trustees Association. He was also a delegate to the Governor's Conference on Education and a delegate from California to the White House Conference on Education.

He is president of the Visalia Production Credit Association, a farmer owned lending organization - which has loaned over eight million dollars in 1957 to farmers in Kings and Tulare Counties.

And Mr. Chairman, and Gentlemen, I think with that background, you can appreciate that Mr. Grant is in a position to reflect to you the thinking of farm and rural people on these questions. Thank you. Mr. Grant.

MR. GRANT: Mr. Chairman and members of the Committee. The subject before this Committee, Assembly Constitutional Amendment No. 46, as amended May 8, 1957, relating to local governmental credit problems, covers or affects some matters on which Farm Bureau does not have a definite recently established policy and some on which we have had little opportunity for study. Therefore, I shall make no attempt to comment on all phases of the subject and prefer that my remarks be considered to reflect my own personal views at this time, offered in a spirit of helpfulness and in an endeavor to convey to you farmer thinking. I expect that my views will be endorsed or modified at a later date to

make them reflect Farm Bureau policy as such is adopted while your study is in progress. I have organized my remarks under two general headings. They are, first, reduction in voting requirements to incur debt, and second, unification of requirements necessary to incur debt.

On the first matter Reduction in Vote Required to Incur Debt; I feel sure the vast majority of farmers in California would be opposed to reduction in the time honored two-thirds vote requirement to authorize issuance of county, city and school district bonds. It would seem to me, however, that an alternative such as that applied in the State of Florida, where an affirmative vote equal in number to one-half of the qualified electors is required might be considered worthy of study. It is noteworthy, however, that many years ago in a case of strictly local general obligation bonds, Farm Bureau favored approval by a simple majority of the property owners concerned.

I offer two basic reasons for objecting to a reduction in the vote requirement for authorization of long-term obligations. Preservation of high credit rating: It is of paramount importance that our government bonds be most readily acceptable to the investing public. Anything short of "gilt edge" securities offered by us on the market will mean increased costs and have other far-reaching detrimental effects. I am informed that with about 7% of the nation's population, we are providing the investment market with

about 10% of the state and local government bonds. Our offerings exceed the demand of the California market and, therefore, a substantial proportion of our investors are beyond the borders of our State. They are in the East. A keenly discerning investment market readily reflects excessive use of bonds or the lack of public support to a given bond issue in sluggishness and thence in discounts or in higher interest rates or in both. Thus in order to keep our credit costs at a minimum and also to insure ourselves against extravagance, I would urge retention of the two-thirds vote, at least until the establishment of some other equivalent safeguard has been developed by thorough study.

Another reason for urging retention of the two-thirds vote requirement is to be found in the principle of fairness. Under the property tax method of raising revenue farmers and others using property in exceptionally large proportions are disproportionately taxed or obligated. I feel that such property owners are entitled to at least reasonable protection from such inequities. It seems to me that if the voting on such matters cannot be limited to those affected, we should be sure that a majority of the qualified electors or a substantial number, at least two-thirds, of those who vote favor it.

Under Uniform Requirements, I am less certain that there would be the same degree of unanimity among farmers as to

application of the two-thirds requirement to all forms and kinds of local obligations. Personally, I feel that like requirements should be imposed upon like obligations. That is, the present requirement of two-thirds approval should apply alike to all general obligation bonds where the area voting is broad enough to include any substantial share of voters to whom property is not of comparable importance. This would include some of the larger districts which now incur long-time indebtedness, or use long-time credit upon a simple majority vote and in some instances without a public vote at all.

Under the subject of Lease Purchase, obviously, under this heading should be discussed the rapidly expanding practice of using public credit in the form of lease purchase.

For reasons previously discussed, I question the advisability of incurring long-time public obligations without expressed public approval. As I said, it jeopardizes our credit and it takes government away from the people.

To those who ask why government should not accept ownership of a building after it has paid rent on it for twenty years, I would reply that it should do so if the rents paid have not been excessive and if the people have approved of such an acquisition program. But I am not naive enough to think that our competitive market will permit me to take my choice - permit me to acquire ownership of a building

merely because I have been renting it for twenty years and not because I have been paying something for that privilege. Surely the rent charged will be higher under a lease program which carries with it an option to acquire the property.

I conclude with a reply to those who seek "easy credit" and think of it in terms of avoiding two-thirds vote. Easy credit will be short-lived unless it is cheap credit and cheap credit is based upon confidence and capacity. The investors must be confident that the dividends can and will be paid. The best assurance of this is an adequate vote of the people.

Thank you for the opportunity Gentlemen to present these views.

CHAIRMAN MASTERSON: Are there questions from members of the Committee?

ASSEMBLYMAN PATTEE: Mr. Chairman.

CHAIRMAN MASTERSON: Mr. Pattee.

ASSEMBLYMAN PATTEE: Mr. Grant it appears that the bankers who are making most of these loans or buying the bonds have changed their feeling toward this 2/3s vote.

MR. GRANT: Yes, I understood that from Mr. Gregory's testimony here, however, it's been my experience that where

a bond issue for school needs have failed, that where the need is evident to a group or a citizens committee that the bond issue subsequently is passed. I feel that the American people know what they want and if the need is justified they will vote it. And I see no need for cutting it from 66-2/3s to 60% unless some other mode, such as I've outlined here, might be studied.

CHAIRMAN MASTERSON: Any other questions from members of the Committee? Mr. Wilson -

ASSEMBLYMAN WILSON: Mr. Grant have you had an opportunity to study votes to determine how the 2/3s vote would compare with a majority of the eligible voters - would it amount to about the same thing as a 2/3s vote or have you had that opportunity to analyze elections.

MR. GRANT: Would it amount to - I have not made an analysis of it, but just a horseback opinion would be that the -

ASSEMBLYMAN WILSON: Probably tougher wouldn't it.

MR. GRANT: Yes, it would be tougher.

CHAIRMAN MASTERSON: Are there other questions.

ASSEMBLYMAN WILSON: Maybe later - go ahead.

ASSEMBLYMAN KLOCKSIEM: Mr. Chairman.

CHAIRMAN MASTERSON: Mr. Klocksiem.

ASSEMBLYMAN KLOCKSIEM: Mr. Grant on page 2 here you make this statement which caught my eye. Maybe I have the wrong inference - these two lines, quote "Anything short of 'gilt edge' securities offered by us on the market will mean increased costs and have other far-reaching detrimental effects." Unquote - now do you infer by that - that perhaps without a 2/3s vote on an issue that the costs of floating the bonds would be higher, the interest rate would be higher because of the fact that there weren't more people involved in it?

MR. GRANT: I feel that if we do not have a large enough majority of the people voting the bonds, within the area in which the bonds are to be used, that the investing public will eventually find that out and they will not feel as secure as they will if 2/3s majority is required.

ASSEMBLYMAN KLOCKSIEM: Well they'll eventually find it out, they'd find it out right away wouldn't they?

MR. GRANT: They've already found out, I think, about some of these leases. I think all those things have an effect.

ASSEMBLYMAN KLOCKSIEM: I thought that was what you were referring to and I wanted to be sure of what you meant, thank you.

CHAIRMAN MASTERSON: Mr. House did you have a question?

ASSEMBLYMAN HOUSE: Mr. Chairman and Mr. Grant, on page 2 here, about the middle of the page - "It is noteworthy, however, that many years ago in a case of strictly local general obligation bonds, Farm Bureau favored approval by a simple majority of the property owners concerned." Do you think there's any possibility of ever working out an election for these general obligation bonds where you would have property qualification as a right to vote?

MR. GRANT: I don't think that under present conditions and the changing population in California that that would be feasible, but that's a personal opinion.

ASSEMBLYMAN HOUSE: Do you think it would be a good thing if it could be worked out?

MR. GRANT: I think many people would think it was a good thing, I don't think so.

ASSEMBLYMAN HOUSE: I've heard that expressed sometimes that it should be property qualification vote on bonds.

MR. GRANT: I'm not advocating that.

ASSEMBLYMAN HOUSE: Thank you sir.

CHAIRMAN MASTERSON: Are there any other questions?

ASSEMBLYMAN WILSON: Presuming, Mr. Grant, maybe that sometimes on school bond elections, it is a little harsh to have 2/3s now, without any attempt to get into any religious squabbles, which certainly we don't want to do, I have been aware of opposition by people who send their children to private schools, for example, to public school bond issues. And it does present quite a problem sometimes if you have an organized opposition like that based upon a particular group - problem and I'm wondering if there isn't good reason to possibly consider reduction in the voting percentage because of that problem.

MR. GRANT: Personally, I don't think so. I think if there is organized opposition, there ought to be organized support. And if there is organized support and the need is shown, I think there are enough who are not in sympathy with that local minority who will carry the vote. At the Governor's Conference, there was a local minority who would remove any tax restrictions and I think wherever you go, you'll find that there is that local minority, but that doesn't give me reason to think that we should remove it.

CHAIRMAN MASTERSON: Are there other questions? I wonder if I could ask a few questions then Mr. Grant.

First I'd like to follow up this quote that Mr. House

referred to - in which you state that many years ago, the Farm Bureau favored approval by simple majority of the property owners concerned and ask you if you don't feel that that general principle is involved in requiring the 2/3s vote at the present. In other words, by requiring 2/3s vote, you're going to give the property owner a weighted vote so to speak, and this was the theory behind putting this provision in the Constitution in 1879.

MR. GRANT: I imagine, sir, that it was the theory in the beginning, but I don't remember the statistics now, but the number of home owners in the United States is far greater than it has been for a long time and so I feel that the voters are in a great measure home owners now - property owners.

CHAIRMAN MASTERSON: So that, isn't there then some justification and reason for reducing, because of the increase in the number of property owners, which you just have spoken of, in reducing the requirement from 2/3s to 3/5s because in that fashion you will give each property owner whether he's for or against the measure, the same weighted vote?

MR. GRANT: If it's done on the premise that ownership of property is the reason for the decision which I think I indicated to Mr. House I'm not in accord with, then that would be - you would be correct, but I do not agree

with that - that that is the premise with which to start. I think that all of us who are electors should have something to say about it.

CHAIRMAN MASTERSON: Well, in other words, if I understand your reply to that, you're forced by the logic of your feeling then that a majority vote would be the proper vote to incur any indebtedness.

MR. GRANT: A 2/3s majority vote.

CHAIRMAN MASTERSON: Well, how can you say that, and say that - that property owners should not in this matter where an ad valorem tax is directly involved and where their property is in effect liened by the indebtedness - how can you say that that's not the theory upon which we go. That one person's vote, namely if he votes "no" should count twice as much as the person who votes "yes"?

MR. GRANT: Well, I understand what you're trying to explain to me, but as I said, if we start on the premise that property alone is the deciding factor, then - then the 2/3 would have to hold, if we go on the premise that the individual count of electors is the premise upon which we start, then we would go for 51%, but I think they both have a bearing. Whether it's 66-2/3% or 60% I am not sure, I am not an expert and I'm not sure that 60% would be bad, but I am certainly satisfied with 66-2/3s per cent with what experience I have had.

CHAIRMAN MASTERSON: Well, now then, let me push that just a little bit further. I am sure that you as a taxpayer wish government agencies to - when they need to borrow money - to get it at the most advantageous terms, is that right?

MR. GRANT: Yes.

CHAIRMAN MASTERSON: This is really why we're concerned with this amendment. I think you'll also agree, that public agencies which resort to such methods as lease-purchase which require no vote, and have to pay a higher rate for those, that their borrowing capacity for general obligation bonds is also affected by lease-purchase agreements that they have, is that correct?

MR. GRANT: That's correct.

CHAIRMAN MASTERSON: Now, if the 2/3s requirement is a factor in forcing these public agencies into going to lease-purchase borrowing wouldn't it be more advisable to lower that 2/3 figure to say 60% in order to encourage them to use the general obligation bond procedure rather than - before this other thing gets too popular.

MR. GRANT: Yes, if there's nothing that can be done to bring the other into line where it must be an expression of the people before that be done.

CHAIRMAN MASTERSON: You understand this, that legislation is a matter of compromise often.

MR. GRANT: Yes.

CHAIRMAN MASTERSON: And, you'd also understand, if you'd been at our hearing in Los Angeles, that - you've perhaps heard here today - that Boards of Supervisors and City Councils are very much opposed to requiring a vote as A.C.A. 46 would in respect to a lease-purchase loan, so that we've got to try to work something out.

MR. GRANT: I am in sympathy with what you're doing. I'm not in opposition to this bill, but I don't know whether 60% or 66-2/3s would be the appropriate amount.

CHAIRMAN MASTERSON: Has your organization ever given consideration to the thought as - between balancing lease-purchase and requiring a vote and reduction to 60%?

MR. GRANT: We will of necessity be studying that this year.

CHAIRMAN MASTERSON: Well, that is exactly what we want you to do - that's principally what we're studying - and the first thing that I think we have found as a problem is that many people don't understand just what it is we are trying to do because they'll pick on one portion of this - the 2/3s and - you have not done that in your statement, incidently, but others have said, well, this is bad to reduce

that not thinking at all about the other things that are involved.

I certainly appreciate your testimony. Are there other questions of Mr. Grant?

MR. HANLEY: May I make a comment?

CHAIRMAN MASTERSON: Yes, Mr. Hanley.

MR. HANLEY: Robert Hanley again, we certainly appreciate the opportunity of appearing before you, Mr. Chairman. We feel that the subject under study by this Committee is very, very important and as Mr. Grant indicated, our organization will have it under a thorough study and we'll have an opportunity to appear before your Committee again prior to the 1959 session, with perhaps more conclusive thinking to bring to you.

CHAIRMAN MASTERSON: Our plans are to hold further hearings.

MR. HANLEY: Very good - thank you.

MR. GRANT: Thank you, gentlemen.

CHAIRMAN MASTERSON: Now, are there any other witnesses who care to speak on the subject matter?

Comments by members of the Committee?

ASSEMBLYMAN PATTEE: Well, Mr. Chairman -

CHAIRMAN MASTERSON: Mr. Pattee.

ASSEMBLYMAN PATTEE: It seems to me that when we get into here, the big argument always ends around this lease-purchase sort of a deal. Why couldn't we draw up a bill that - maybe just to make them go to a vote of the people?

CHAIRMAN MASTERSON: Well, we could.

ASSEMBLYMAN WILSON: He can, can't he?

CHAIRMAN MASTERSON: You wouldn't have much chance of getting it through, because the League of Cities, and the Boards of Supervisors Association and everybody else would be out there to knock it in the head. It's just a question of whether you can work out some sort of a compromise to - to require a vote for that kind of borrowing which I think as we proceed becomes more and more evident - is a danger to the credit structure of the State of California, and whether we can work out a compromise that will be acceptable to them. That's the truth of the matter.

ASSEMBLYMAN PATTEE: I see.

CHAIRMAN MASTERSON: I want to thank all of the witnesses, the spectators for coming through the obstacles that were put before them by the weather here and I want to thank the members of the Committee for attending and now declare this meeting adjourned.

Meeting adjourned at 4:02 p.m.

E X H I B I T S

ASSESSOR'S MAP OF NON-TAXABLE LANDS IN SAN DIEGO COUNTY, CALIF.

JOHN McQUILKEN ASSESSOR, SAN DIEGO COUNTY

1955 LEGEND	Number of Acres
U.S.A. Military Lands, acquired before 1942	6,788
U.S.A. Military Lands, acquired 1942 or later	165,389
Federal Housing, Post Offices, etc.	2,889
Indian Reservations	110,036
State Parks (Desert, Mountain and Beach)	415,672
City and County Public Parks and Fee-Owned Lands	20,167
Cleveland National Forest (Green area on map shows all enclosed by national forest boundaries, including public domain and patented land therein. Acreage figures are net forest area, only.)	276,298
U.S.A. Public Domain	409,397
State School Lands and Privately-Owned Non-Taxable Lands	68,546
Total Non-Taxable Lands in San Diego County	1,475,182
Total Area of San Diego County: 4,258 Sq. Miles	2,725,120

ALL LAND AREAS IN COLOR ARE NON-TAXABLE—54.1% OF ENTIRE COUNTY

SAN DIEGO COUNTY

CALIFORNIA

SCALE IN MILES

THE RODNEY STOKES CO.
870 Third Ave. San Diego

Robert Henrich
CHIEF ENGINEER

A P P E N D I X

APPENDIX

STATEMENT
Of
ROBERT E. McKAY
Assistant Executive Secretary
CALIFORNIA TEACHERS ASSOCIATION

Submitted To

ASSEMBLY REVENUE AND TAXATION SUBCOMMITTEE
ON PUBLIC INDEBTEDNESS

Fresno, California, January 9, 1958

Re: ASSEMBLY CONSTITUTIONAL AMENDMENT 46

Mr. Chairman and Members of the Committee:

The interest of the California Teachers Association in A.C.A. 46 was indicated to this subcommittee at its meeting in Los Angeles on December 3, 1957.

At that time I reported that a study of the public policy involved and its application to public school finance had been undertaken by a subcommittee of the CTA's Committee on Financing Public Education, but that no conclusions had been reached. I said that a statement of the CTA's attitude on the matter would be submitted as soon as possible. This is in the nature of a progress report.

The Finance subcommittee consists of Mr. Charles Kranz, Superintendent of the Mt. View Elementary School District, El Monte, chairman; Dr. Lionel DeSilva, Executive Secretary of the CTA, Southern Section; and Frank Alexander, teacher at Lynwood High School, with Dr. Chester Gilpin and Dr. Lloyd Nelson as consultants.

Robert E. McKay, CTA
Statement on ACA 46

Following a careful analysis of the potential effect of the proposed constitutional amendment, not only upon school districts, but also upon other governmental agencies, the subcommittee unanimously recommended approval of ACA 46. This recommendation was concurred in by the Committee on Financing Public Education, which is a representative statewide group of about 40 members under the chairmanship of Paul Ehret, Superintendent of the San Lorenzo Elementary School District.

The findings and recommendation of the Finance Committee were next submitted to the statewide Legislative Committee, whose chairman is Jack Rees, Superintendent of the Hayward Elementary School District. After consideration the Legislative Committee took favorable action and recommended that the State Council of Education support ACA 46.

The State Council is the policy making body of the California Teachers Association. It consists of about 330 members elected by CTA members throughout the state. It meets semi-annually.

The recommendations of the Finance and Legislative Committees were submitted to the State Council at its Los Angeles meeting on December 7. The Council took the recommendations under advisement and scheduled final action at its next meeting to be held in April.

I have gone into some detail in reporting the consideration this proposal has had by the deliberative bodies of the California Teachers Association to indicate that the favorable attitude and probable final action were not arrived at casually. The detailed study and careful analysis given this issue are standard practice in the determination of each legislative position taken by the California Teachers Association.

I indicated at the December meeting of this subcommittee that I believed school administrators generally would favor a reduction from two-thirds to 60 per cent of the vote required to pass a school bond issue or to enter into a lease-purchase agreement for provision of school facilities. I noted that such an easing of the required vote would have the effect of making it somewhat easier to provide funds for school construction. I expressed the belief, however, that while some school bond issues had failed to pass because they did not quite receive the required two-thirds approval, generally this situation did not constitute a problem.

Research studies made by the California Teachers Association indicate that there has been little or no change statewide in the percentage of school bond issues that pass. Voters of California school districts continue to give overwhelming support to school finance measures, override tax and state building loan authorizations as well as bond issues. There

appears no decline in public support of financial measures for public schools.

A study covering the results of school district financial elections in the two-year period prior to February 1957 clearly shows that Californians consistently are willing to pay increased amounts for support of their schools. Uniformly throughout the state citizens have voted to pay higher tax bills for current operations and for the repayment of school construction bonds and loans.

The CTA Research study shows that more than 87 per cent of all school finance measures submitted to the voters in the two-year period were approved. There was relatively little difference in the percentage of tax, bond and state loan elections which passed. Of the 1,384 proposals submitted, the voters approved 1,152.

Surprisingly, the percentage of vote required to pass a school finance measure appeared to have no appreciable effect on the outcome. Whereas it might be assumed that tax increases, requiring only a majority vote, would be approved in greater numbers than bond issues, requiring a two-thirds vote, such was not the case.

In fact, public approval of the two types of issues was almost identical. Of the 463 tax elections, 86.1 per cent passed, as compared with 84.9 per cent of the 597 bond issues voted upon between 1955 and 1957.

It is interesting to note that at the elementary level, where most of the elections were held, a slightly higher percentage (86.8 per cent) of the bond issues were passed than the tax elections (85.5 per cent), despite the fact that the bond issues required a two-thirds vote.

Public sentiment on school finance proposals appears uniform regardless of the vote required. When over-ride tax proposals, requiring only a majority vote, and bond issues requiring a two-thirds vote, are submitted on the same ballot voters almost always vote the same on both issues. In the two-year period tax and bond issues were submitted on the same ballots in 30 school district elections. In only two instances did the voters approve the simple majority tax issue and reject the two-thirds majority bond issue. In 26 elections they approved both; in two they rejected both.

Of the three types of finance proposals submitted to school voters the one which has received the greatest measure of approval has been one requiring a two-thirds vote--the authorization to enter into agreements with the State for loans and grants for school construction.

A copy of CTA Research Bulletin No. 102 containing the results of School District Tax and Bond Elections, January 1955 to February 1957, is submitted to the subcommittee.

Robert E. McKay, CTA
Statement on ACA 46

The subcommittee will be advised as soon as the State Council of Education has taken final action on ACA 46.

California Teachers Association
693 Sutter Street, San Francisco 2
1/10/58-es

LOS ANGELES
BUILDING AND CONSTRUCTION TRADES COUNCIL

Chartered June 1923 by the

BUILDING AND CONSTRUCTION TRADES DEPARTMENT
AMERICAN FEDERATION OF LABOR

1626 Beverly Boulevard Los Angeles 26,Calif.

STATEMENT BY L. A. PARKER, L. A. BLDG. & CONSTRUCTION TRADES COUNCIL, BEFORE THE ASSEMBLY REVENUE AND TAXATION SUBCOMMITTEE ON PUBLIC INDEBTEDNESS ON ACA-46 IN FRESNO, CALIFORNIA, - JANUARY 9, 1958

Mr. Chairman:

Since appearing before the Committee in Los A ngeles on the matter of Assembly Constitutional Amendment 46, we felt that it would be better if we submitted some sort of a written statement. First let me say that I am a representative of the Los Angeles Building and Construction Trades Council and I was requested by the State Federation of Labor to represent them in this matter before your Committee.

As we understand this Constitutional Amendment in a general way, it will set up the procedure in the Constitution of the State of California, if approved by the voters of this State, for conducting elections on bond issues or the general expenditure of money, particularly for capital improvements. It is also our understanding that this will be far more restrictive than that which prevails at the present time in the matter of carrying out necessary improvements of a capital nature. The Building Trades Council of Los Angeles and its affiliated Local Unions have a direct interest in

this matter because capital improvements mean work for their members. Because of the immense influx in population it has been extremely necessary that provisions of all kinds be supplied to take care of this immense influx that has suddenly come to this state. This means new school buildings, hospitals, court rooms and even increased jail facilities.

Projected ahead in Los Angeles County, in addition to the expenditures this current year, are approximately $287,000,000 for 1957 to 1967, and therefore it has been necessary to use all of the various legal means that are now available to meet this expenditure. Some of this involves lease purchase -- part would come from the Employees' Retirement Fund which accumulates in excess of $5,000,000.00 a year. In fact health centers, court rooms, charitable institutions, hospitals, etc. -- the space for these facilities must be either leased or purchased so as to be available as quickly as possible and cannot wait for the necessary procedures that must be followed under this proposed Constitutional Amendment.

The City of Los Angeles - Department of Water - has underway a 5-year expansion program calling for $275,000,000.00 to take care of power facilities alone. $85,000,000.00 will be invested in water works' construction to take care of this rapid increase in population.

Statement by L. A. Parker before the
Assembly Rev. & Tax. Subcommittee
Fresno, January 9, 1958

We do not have available, and I am sure others can give it to you, the amount of funds absolutely necessary for school buildings to take care of the rapid increase in school population, where at the present time, many school children must now attend only one-half day sessions because of lack of space for them.

While the employees constructing this work are members of our Building Trades' Unions they also participate in the public need necessary by this unusual situation. As stated earlier we feel that this proposal is not necessary and will freeze into the Constitution of the State the procedure that will tend to restrict the necessary projected capital outlay for projects that have now become an urgent necessity. Passage of this amendment will freeze into the Constitution the method of securing necessary money for replacement of damages that might be caused by disaster of any kind, such as floods, fire, earthquakes, etc.

In the County's projected capital projects' proposal there is every type of necessary service that must be taken care of in the shortest time possible. Therefore on behalf of the Los Angeles Building and Construction Trades Council and the State Federation of Labor we urge that this

Statement by L. A. Parker before the
Assembly Rev. & Tax. Subcommittee
Fresno, January 9, 1958

Committee does not recommend the approval of Assembly Constitutional Amendment 46.

Respectfully submitted,

/s/ L. A. Parker
L. A. Parker, Business Representative
L. A. Bldg. & Constr. Trades Council

CONSTITUTIONAL DEBT RESTRICTIONS SHOULD NOT BE BYPASSED

* * *

Presented by
Harry D. Ross, Controller
of the
City and County of San Francisco
before the Tax Session of the
California State Chamber of Commerce
in San Francisco, December 4, 1952

* * *

There is currently present in this state the following problem:

Shall the People

of the cities,

the various political subdivisions of the State, and the like,

have the right to determine whether or not debt shall be incurred on their behalf exceeding the income or revenue of any fiscal year

by a two-thirds vote,

by a majority vote, or

shall the right to impose such a burden upon the People rest with their respective governing bodies?

Section 18 of Article XI of the State Constitution reads as follows:

"No county, city, town, township, board of education, or school district

shall incur any indebtedness or liability

in any manner or for any purpose

exceeding in any year the income and revenue provided for such year,

without the assent of two-thirds of the qualified electors thereof

voting at an election to be held for that purpose,

nor unless before or at the time of incurring such indebtedness

provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due

and also

provision to constitute a sinking fund for the payment of the principal thereof,

on or before maturity,

which shall not exceed 40 years from the time of contracting the same;

provided, however, anything to the contrary herein notwithstanding,

when two or more propositions

for incurring any indebtedness or liability

are submitted

at the same election,

the votes cast for and against each proposition

shall be counted separately,

and when two-thirds of the qualified electors,

voting on

any one of such propositions,

vote in favor thereof,

such proposition shall be deemed adopted."(1)

Unless essential to an understanding of this Constitutional Section, I do not propose to concern myself with other Constitutional provisions, or the many statutory and charter enactments, except to indicate to you that when a problem arises, recourse to them is manifestly necessary for a complete solution.

It is best, I believe, to indicate at the outset that, in the financial administration of the City and County of San Francisco, constant awareness of debt limitation is important. It should not be construed from my statement that our government, or its officers, seek to avoid the debt and liability inhibition. To the contrary, we choose to be circumspect in our activities, but because of our dual role, that of city and county, having the powers and performing the functions of both (2) the impact of Section 18, Article XI is heavier upon us than most governmental units.

The success of municipal and county organization depends, largely, upon solvency. The necessity for stringent regulation as to the manner and mode of incurring indebtedness, and as to the amount which may be incurred, is plain.(3)

Section 18 of Article XI has been subject to much judicial review. This provision was adopted for the purpose of putting an end to the practice of extravagance and expenditure in engaging in public improvements.(4) Many of us have sought to act as jealous guardians of its intent.(5) There are others who have attempted, and who attempt, to limit its application.(6) From this conflict, litigation has arisen.

It is an elementary principle of law that whoever deals with a municipality /as with a county, or other body politic/ does so with notice of the limitations of its power, and with notice, also, that he can receive compensation for his labor or material only from the revenues and income provided for the fiscal year during which his labor and material are furnished.(7)

The framers of the 1879 Constitution intended each year's revenue should pay each year's expenses, and that no claims upon one year's revenues should be a charge upon the revenues of future years,(8) without the consent of two-thirds of the qualified voters exercising their privilege at an election, the purpose of which was to determine whether or not the established percentage of electors agreed that the indebtedness or liability be incurred.(9) It is not, therefore, a requisite that two-thirds of the electors voting at an election concur, but that two-thirds of those who vote on the proposal agree to the indebtedness or liability.(10)

Further, the California Constitution requires, before or at the time of incurring such indebtedness, provision must be made

for the collection of an annual tax sufficient to pay the interest on the indebtedness as it falls due and, also, a sinking fund be created to pay the principal, on or before maturity, which shall not exceed 40 years from the time of contracting.(11)

The courts have highly commended the intent of Section 18 of Article XI. They have said its provisions are based upon sound public policy. They have warned that arguments of convenience, or of present necessity, should not be allowed, by loose construction, to weaken its force or limit its extent.(12) Yet, gradually, this section has been weakened, and its extent has been limited.

The doctrine, which may be termed "involuntary obligations," has been used in many instances in the onslaughts upon our Constitution. The section under discussion, it has been determined, is confined in its application to those forms of indebtedness and liability which may have been created by the voluntary action of the officials in charge of affairs, and has no application to cases of indebtedness or liability imposed by law or arising out of tort.(13) Penalties imposed by law - that is, fixed by statute - do not fall within the inhibition of the Constitutional Article and Section.(14)

Within this group of "involuntary obligations," we discover the publication of a proposed freeholder's charter,(15) the payment of salary to a public officer,(16) a statutory penalty incurred through abandonment of an eminent domain proceeding,(17) the obligation to refund an illegal tax paid under protest,(18) and a judgment obtained against a municipality, for tort.(19) The list is, by no means, exhausted. I intend to convey to you the broad scope of "involuntary obligations"; I desire to make clear that, despite the logic of the courts' decisions, this section is not the

prohibition you, nor I, on first reading, might consider it.

What, then, of future obligations? How have the courts treated contractual long-term indebtedness or liabilities? A contract for future annual payments for a sewer farm was held not obnoxious to the Constitution (20) as falling within the general rule (of a series of California cases) that if a lease or other agreement is entered into in good faith and creates no immediate indebtedness for the aggregate installments therein provided for, but, on the contrary, confines liability to each installment as it falls due and each year's payment is for the consideration actually furnished that year, no violence is done to the constitutional provision. (21) On the other hand, (22) where a city was obligated to spend certain monies for park purposes, or forfeit rights, another rule has been applied; this rule is if the instrument creates a full and complete liability upon its execution, or if designated as a "lease" and it is a subterfuge and it is actually a conditional sales contract in which the "rentals" are installment payments on the purchase price for the aggregate of which an immediate and present indebtedness or liability exceeding the constitutional limitation arises against the public entity, the contract is void. (23)

Seeking applications of the latter rule, let us survey two recent opinions of the Supreme Court. One has been designated the Offner case (24) and the other is generally referred to by its full title: Dean v. Kuchel. (25) They are, both, late expressions of judicial opinion.

In the Offner matter, the City of Los Angeles leased land to a company. This company constructed an incinerator on the land, then entered into an agreement with Los Angeles whereby the city paid rental for the incinerator, but from time to time could

exercise an option to purchase. The court found the city had no intention to purchase, had no requirement to exercise its option, and the amount of rentals to be paid in a single fiscal year, together with other debts and liabilities of the city, would not exceed its income and revenue for such year. It, also, found that each payment was in consideration of something furnished and that, if the option were not exercised, the incinerator could be removed. Thus, the conclusion of the court was the transaction did not violate Section 18 of Article XI.

Turning now to Dean v. Kuchel, the problem revolved about Section 1 of Article XVI rather than Article XI, Section 18; however, the court conceded the same principle applied to both constitutional provisions.(26)

The legislature had, by statute, authorized the Director of Finance to enter into lease arrangements for public buildings, for a term not to exceed 40 years, and with the proviso that at the expiration of the term, the title would vest in the State.

The State " let" land to a company for $1.00, whereupon a building was to be constructed and "leased" for 25 years at $3,325 a month. At the end of 15 years, the State could terminate the agreement, if certain amounts had been paid the company according to a specified schedule.

It was argued this instrument violated the Constitutional $300,000 state debt limitation. The court failed to agree.

Said the court, contrasting the immediate situation with the Offner one:

> "We find no logical distinction between the Offner case and the one at bar. It is true there was an option to purchase in the former rather than a vesting of title at the end of the term as in the instant case, but as far as liability is concerned, the state under this

> instrument is in a better position, for it gets title without the payment of anything other than a rental. The essence of the Offner rule is that the payments are for a month to month use of the building. Here it is clearly stated the rentals are for that purpose. ... We are satisfied, ... that the instant transaction qualifies as a lease for the purpose of debt limitation." (Pps. 447, 448)

Let me read a bit from Justice Edmonds' very strong dissent:

> "In my opinion, even the most liberal construction of the contract which this court is asked to approve shows that the transaction is a subterfuge and therefore void within the rule applied in City of Los Angeles v. Offner ... " (P. 449)

> "Under any construction other than one tortured from the terms 'lease' and 'rental' the terms ... unmistakably show that it is an installment purchase contract which violates ... (the Constitution) ... By the Constitution, the people have prohibited the state from incurring any liability in excess of $300,000 which has not been approved by the electorate. The total 'rental' for the building exceeds the forbidden amount, and the company in fact retains title to the 'demised' premises for security purposes only. Such reservation is the outstanding characteristic of a contract of conditional sale ..." (Pps. 450, 451. I have added the emphasis.)

I desire to discuss another theory upon which the prohibitions of Section 18 of Article XI are dismissed. It is one with which no real objection may be found. The Article and Section spell out exactly against whom the inhibitions apply. Those other governmental bodies against which no inhibitions lie are exempt. It would follow, consequently, public corporations, such as the various irrigation districts,[27] highway districts,[28] utility districts,[29] county water districts,[30] housing commissioners,[31] and others that might be mentioned are public entities without this Constitutional Section.

The Section has, it is ruled, no application to contingencies. Where, for example, consideration was not to be paid until an act was performed, this contingency has been held without the inhibition.[32]

We turn next to departments and boards and to the problem of the "special fund" doctrine. Boards and departments created by charter and possessing requisite powers, the courts say, are legal entities.(33) Being legal entities, since they have the powers and organization comporting with the modern idea of a commission form of government, the prohibitions of Section 18 of Article XI do not extend to their exercising of functions under such charter powers granted them. I mention this separately from and a few moments after my remarks concerning highway districts, irrigation districts, and the others, because it is my purpose to show you that a municipal department, albeit a proprietary function of the municipality, may in itself be exempt.

The special fund doctrine is one to which we are committed in California.(34) The theory behind the doctrine is that where a special fund exists, from which obligations may be paid, and recourse cannot be had to the general fund of, for example, a municipality,(35) the prohibitions of Section 18 of Article XI do not apply. Thus, a water department liability, in Los Angeles, even where the city council agreed to raise water rates, if necessary, to meet the indebtedness, was held to be within the special fund doctrine, since the general city funds would not be called upon in any event.(36) Said the court In Re California Toll Bridge Authority:(37)

> "The overwhelming weight of judicial opinion in this country is to the effect that bonds or other forms of obligations issued by cities, states, counties, political subdivisions, or public agencies by legislative sanction and authority, if such particular bonds or obligations are secured by and payable from the revenues to be realized from a particular utility or property, acquired with the proceeds of the bonds or obligations, do not constitute debts to the particular state, political subdivision, or public agency issuing them, within the definition of 'debts' as used in the constitutional provisions of the states having limitations as to the incurring of indebtednesses." (P 302)

In my introduction I have said that either the citizenry must determine whether we are to incur indebtednesses and liabilities, payable in the future, or whether city officials, county officials, or school officials should have the authority. I have said this because I believe half-way measures are unwise. I have also said this because I see constantly the impcsition of one body politic upon another, the creation of bureaucracies and the formation of authorities, many of which are not responsive to the democratic process, and all of which, in some measure, may spend today what you must pay tomorrow.

The framers of our Constitution, in my opinion, did not foresee that a State government, in its various stages of power, would be comprised of more than the township, town, county, school board or district, and state pattern. If they did, I feel it is very doubtful they contemplated the vast and increasing system of districts and authorities we live with today. In enacting Section 18 of Article XI, surely the inclusion of towns, counties, cities, and school districts, to the exclusion of other bodies politic, indicates they felt the taxing power would remain primarily within that groupment. Nevertheless, an astonishing number of taxing agencies, aside from cities, etc., actively create liabilities and debts which you, as a taxpayer, and district resident, are required to pay.

I had proposed to read to you the number of <u>active local governmental taxing units</u> in California during 1951. They consist of:

Elementary school districts
Unified school districts
College districts
Municipal acquisition & improvement districts
High school districts
Junior college districts
County acquisition & improvement districts
Bridge districts

Airport districts	Cemetery districts
Soil conservation districts	Water conservation districts
Drainage districts	Fire protection districts
Garbage districts	Hospital districts
Municipal improvement districts	Municipal drainage districts
Municipal road districts	Irrigation & water storage dists.
Joint highway districts	Levee districts
Library districts	Lighting districts
Lighting maintenance districts	River project mainten. districts
Road maintenance districts	Sewer maintenance districts
Storm drain maintenance districts	Water maintenance districts
Memorial districts	Mosquito & pest abatement dists.
Park, rec. & parkway districts	Police districts
Port and harbor districts	Protection & storm water district
Permanent road districts	Road supervisorial districts
Sanitary districts	Sanitation districts
Sewer districts	Municipal utility districts
Public utility districts	Water districts

Miscellaneous (boulevard, local health, labor camp, mining, reclamation, and county road districts).

These 45 classifications, comprising 4,087 taxing units. I did not mention California's 305 cities, including its one city and county, nor its 57 counties (excluding the one city and county). Had I done so, the total of taxing units would have been raised to 4,449.(39) I did not include various other forms of bodies politic, including rapid transit authorities, redevelopment agencies, or parking authorities.

This tremendous tax structure is controlled, in the main, by statute. Section 18 of Article XI has no application to the majority of the units.

Messrs. Crouch, McHenry, Bollens, and Scott have written a book titled "State and Local Government in California." This work was copyrighted by the Regents of the University of California in 1952. Chapter 13 is devoted to special districts and their characteristics. Should you be inclined to review special districts, I sincerely recommend the book.

It is not the number of taxing units in California, but the need for proper Constitutional control of all that concerns

me. Our theory of government is that sovereignty is vested in the (40) (41)
people. Our federal constitution is a grant of power while our (42)
state constitution is a restriction upon the power of the state. We do not look to the State Constitution to determine whether the Legislature is authorized to do an act, but only to see if it is (43)
prohibited. Thus, an act of the legislature is legal when the (44)
Constitution contains no prohibition against it.

Because the State Constitution is a limitation of power, and not a grant, it becomes obvious that Section 18 of Article XI is restricted to those units of government enumerated therein. The vast number of special districts and authorities are, unless limited by statute, exempt.

I will quote you from pleadings in the Glendale v. Chapman (45)
matter, decided in December of 1951, a statement ascribed to David M. Wood, who is termed "dean of American municipal bond attorneys":

> "The constitutional limitations have been further avoided by a device known as the 'revenue bond.' When a municipality has reached its debt limit and desires to make an improvement to its water plant or other public utility it now issues a bond payable solely out of the revenues of that plant. These bonds the courts have almost uniformly held to be exempt from the limitations of indebtedness, on the theory that the cost of improvement does not fall upon the taxpayer, but is paid solely out of the net revenues of the utility.
>
> "It is obvious, however, that if these net revenues were not used for the purpose of making the new improvement, they could be used in reducing the ad valorem tax, so that the notion that revenue bonds do not create any burden for the taxpayer is purely a legal fiction. Even if the utility, proposed to be constructed, is a new utility and the bonds issued for its construction are payable solely out of the net revenues of the new property, they still impose a burden upon the inhabitants of the municipality. Whether the municipality takes x-dollars from a tax payer as a sewer charge or in the form of a general property tax, the effect upon his pocketbook is identical." (46)

This quotation might well have been applied to my remarks concerning special funds, but I have used it here as a clear line of demarcation from the analysis I have attempted so far. From this point, I wish to express my conclusions.

I have no quarrel with the opinions of the courts. Each of them is a logical development. The courts do not enact law; they seek to apply its meaning.

You, as a forceful, leading, and articulate body, composed of a segment of our citizenry, are best in position to examine the course government is taking and if, under your scrutiny, remedial action is necessary, you may propose proper Constitutional amendment.

Should you believe Section 18 of Article XI should contain a definition of revenue,a restriction on the freedom of governmental bodies to incur future obligations, a limitation of the special fund doctrine, and/or an inclusion of agencies, districts, and authorities within its inhibitions, you have the same duty and right of any other citizen to attempt such reform.

I can but warn you that this is not one of the simple matters often requiring legislative or electoral action. It is not a black or white situation. There are many ramifications that must be studied. It is a task for committees aided by attorneys and the heads of governmental units dealing with this problem.

It is my view that government must be responsive to the will of the people. Expenditures require taxes. Expenditures require income. I am of the opinion that debts and liabilities incurred beyond revenues and incomes of fiscal years should be determined by the electorate and not by elected or appointed officers but, to reach this result, I am convinced we need a redrafting of our basic law.

(1) Article XI, Section 18, California Constitution. Originally enacted in the Constitution of 1879, this section has been amended in 1892, 1900, 1906, 1914, 1918, 1926 and 1949.

(2) Nicholl v. Koster, 157 C 416, 420, 108 P 302; San Francisco v. Collins, 216 C 187, 13 P(2) 912.

(3) 18 Cal. Jur. 873.

(4) 18 Cal. Jur. 880.

(5) San Francisco v. Boyd, 17 C(2) 606, 110 P(2) 1036.

(6) McKinney New Calif. Digest: Counties 122; Municipal Corporations 172-186; State Cal. 37, 38; Mason, Constitution of California: Annotated.

(7) Weaver v. San Francisco, 111 C 319, 43 P 972; Fresno etc. Co. v. McKenzie, 135 CA 497, 67 P 900.

(8) Higgins v. San Diego Water Co., 118 C 524, 50 P 670 with reference to the first case in which Article XI, Section 18 was considered: San Francisco Gas Co. v. Brickwedel, 62 C 641.

(9) Fairfield v. Hutcheon, 33 CA(2) 475, 202 P(2) 745.

(10) California Constitution Article XI, Section 18, beginning with "... provided, however, ..."

(11) Mahoney v. San Francisco, 201 C 248, 257 P 49.

(12) Garrett v. Swanton, 216 C 220, 13 P(2) 725; 21 Cal. Law Review 626.

(13) City of Long Beach v. Lisenby, 180 C 52, 179 P 198.

(14) Mills v. Houck, 124 CA 1, 12 P(2) 101.

(15) Arthur v. City of Pasadena, 27 CA 782, 151 P 183.

(16) Lewis v. Widber, 99 C 412, 33 P 1182.

(17) Mills v. Houck, supra.

(18) Heyman v. Bath, 59 CA 499, 208 P 981.

(19) Metropolitan Life Ins. Co. v. Deasy, 41 CA 667, 183 P 243.

(20) McBean v. City of Fresno, 112 C 159, 44 P 358, 53 Am St Rep 191, 31 LRA 794.

(21) City of Los Angeles v. Offner, 19 C(2) 483, 486, 122 P(2) 14.

(22) Chester v. Carmichael, 187 C 287, 201 P 925.

(23) City of Los Angeles v. Offner, supra.

(24) id

(25) Dean v. Kuchel, 35 C(2) 444, 218 P(2) 521.

(26) id, p. 446.

(27) In re Madera Irrigation District, 92 C 296, 28 P 272, 675.

(28) Sharp v. Joint Highway District No. 6, 111 CA 181, 295 P 841.

(29) Strain v. East Bay Municipal Utility District, 21 CA(2) 281, 69 P(2) 191.

(30) Bliss v. Hamilton, 171 C 123, 152 P 303.

(31) Willmon v. Powell, 91 CA 1, 266 P 1029.

(32) Doland v. Clark, 143 C 176, 76 P 958.

(33) Mesmer v. Board of Public Service Commissioners, 23 CA 578, 138 P 935.

(34) Department of Water etc. v. Vroman, 218 C 206, 219; 22 P(2) 698

(35) Shelton v. City of Los Angeles, 206 C 544, 550, 275 P 421.

(36) Department of Water etc. v. Vroman, supra.

(37) In re California Toll Bridge Authority, 212 C 298, 302, 298 P 485; See also California Toll Bridge Authority v. Kelly, 218 C 7, 21 P(2) 425.

(38) City of Pasadena v. McAllaster, 204 C 267, 267 P 873.

(39) "State and Local Government" Crouch, Bollens, McHenry, Scott. University of California Press, 1952.

(40) 11 Am. Jur. 608, #8.

(41) 10th Amendment, U. S. Constitution.

(42) Sheehan v. Scott, 145 C 684, 79 P 352.

(43) Fitts v. Superior Court, 6 C(2) 230, 234, 57 P(2) 510

(44) 11 Am. Jur. 620, #18.

(45) Glendale v. Chapman, 108 CA(2) 74, 238 P(2) 162.

(46) Weekly Bond Buyer, Sep. 27, 1941, p. 6.